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Court, U. S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 225

INSULAR SUGAR REFINING CORPORATION,
Petitioner,

vs.

THE UNITED STATES,

Respondent.

PETITION FOR CERTIORARI TO THE COURT OF
CLAIMS AND BRIEF IN SUPPORT THEREOF.

J. STERLING HALSTEAD,
Attorney for Petitioner.

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No. 225

INSULAR SUGAR REFINING CORPORATION,
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vs.

THE UNITED STATES,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF CLAIMS.**

Insular Sugar Refining Corporation prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above entitled cause on April 5th, 1943. A motion for a new trial was denied on June 7th, 1943.

A Statement of the Matter Involved.

Petitioner instituted this proceeding in the Court of Claims to recover floorstock taxes on sugar, paid by it under the Agricultural Adjustment Act which was held unconstitutional by this Court in *United States v. Butler*, 297 U. S. 1. To comply with applicable statutory provisions peti-

titioner sought to show the extent to which it bore the burden of the tax paid.

The tax was imposed on sugar floorstocks held at the first moment of June 8, 1934. Petitioner paid a total of \$233,203.93.

Petitioner's proof showed that it was unable to sell its taxed sugar for prices sufficient to cover its value immediately before the tax attached and the amount of the tax. To the extent that it failed to do so (\$59,403.36), petitioner contends that it had not passed on the tax but had absorbed it.

The Court of Claims decided that petitioner was not entitled to recover, basing its decision on the ground that petitioner had failed to prove that its taxed sugar was sold for less than *its cost* plus the tax. The Court erred in so holding.

It is requested that this petition be considered with the petition heretofore filed in *Williams v. United States*, docket No. 194.

Statutes.

The statutory provision involved, Section 902 of the Revenue Act of 1936, Chapt. 690, 49 Stats. 648, is set forth in full in the Appendix, Page 12.

Questions Presented.

In order to prove that a taxpayer bore the burden of the tax, *is it necessary*

(1) to establish, as the Court below held, that the amount received for the product was less than *its cost plus the tax, or*

(2) is it sufficient to show, as has been held by other courts, that the sales price was less than the value immediately before the tax attached plus the tax.

Reasons for the Allowance of the Writ.

1. The decision of the Court below is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *C. B. Cone & Son Mfg. Co. v. United States*, 123 F. (2d) 530, and also with the decision of the United States District Court for the Western District of North Carolina in *Arkwright Mills v. United States*, 49 F. Supp. 970.* In both these cases it was held that the plaintiff had proved it bore the burden of the tax by showing that the floorstock in question was sold for prices less than the market value on the date when the tax attached plus the amount of the tax itself.
2. The Court of Claims has decided an important question of federal law which has not been, but should be, settled by this Court. Title VII of the Revenue Act of 1936 and particularly Section 902 thereof, requiring that in order to recover taxes paid under the unconstitutional Agricultural Adjustment Act, a taxpayer must prove that it bore the burden of the tax, has not been passed on by this Court except insofar as the Court decided in the *Anniston Mfg. Company v. Davis*, 301 U. S. 337, that this requirement itself was not unconstitutional. Until this provision is interpreted and construed by this Court this law cannot be administered by the Treasury Department without the danger of serious injustice to taxpayers.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued directed to the United States Court of Claims, requiring that this cause be certified to this Court for review and determination of all errors assigned.

INSULAR SUGAR REFINING CORPORATION,
By J. STERLING HALSTEAD.

* Note: Full text of the decision printed in the appendix hereto page 15.